

**CITY OF MILPITAS
UNAPPROVED**

PLANNING COMMISSION MINUTES

April 28, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitafan, Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu
Absent: None
Staff: Carrington, Lindsay, McNeely, Nadal and Rodriguez

**III.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

Rob Means, 1421 Yellowstone, stated that a number of Cities are concerned about BART plans and have been questioning if the plans are financially responsible and are also concerned because the Board of Supervisors stated that many of the projects promised to voters in the 2000 measure A plan will not be built because of the economic downturn as well as VTA's commitment to make BART extension operationally by 2015.

Mr. Means commented that there is a transit case in Los Angeles that states it is illegal to discriminate against current passengers in favor of potential passengers and felt that the case relates to the serious concern of not being able to continue the level of service that the citizens have come to expect from VTA if BART continues.

**IV.
APPROVAL OF MINUTES
April 14, 2004**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of April 14, 2004.

There were no changes from staff.

Motion to approve the minutes as submitted.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

Commissioner Giordano asked staff if the Commissioner's questions from the last meeting regarding the CIP discussion would be answered. **James Lindsay, Acting Planning Manager**, responded that it would be agendaized at a future meeting once the Council reviews the CIP, the Council will consider the Planning Commission comments.

Mike McNeely, City Engineer, added that staff is working on a memo to address the comments to the Commission.

**V.
ANNOUNCEMENTS**

Mr. Lindsay announced that the Santa Clara County housing trust is sponsoring an affordable housing tour that will be on Friday, June 11th from 8:30 a.m. to 1 p.m. The Commission could register directly with the website, or contact the office

Vice Chair Lalwani invited residents to attend the Milpitas Global Village international event, event on Saturday, May 1st from 11 a.m. to 4 p.m.

On behalf of the Rotary Club, Commissioner Giordano invited the public to attend the third annual carnival on Thursday, May 13th through Sunday, May 16th, located at the Wal Mart location.

Commissioner Garcia thanked Chair Nitafan for bringing back information of Religious Land Use Issues and asked staff when it would be agendize for discussion. Mr. Lindsay replied that the City Attorney would prepare a presentation for the Commission within the next meeting or two.

Commissioner Garcia asked staff for the status on second family units (granny units) and asked what are the rules now since there was a change from Sacramento. Mr. Lindsay replied that staff could provide another discussion item and have the City Attorney provide a legislative update on the current status. He noted that there is pending legislation that is affecting second family units and that the City recently amended the zoning code last year in response to the legislation which allows more second family units now than before.

VI. APPROVAL OF AGENDA

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

VII. CONSENT CALENDAR

There were no items to be considered on the consent calendar.

VIII. PUBLIC HEARING

1. REVIEW OF THE BART EXTENSION TO MILPITAS, SAN JOSE, AND SANTA CLARA DEIS/DEIR COMMENT LETTER. Staff Contact: Dennis Carrington, (408) 586-3275.

Mr. Lindsay announced that he has extra copies of the Citizens guide for the environmental document and noted that the Commission was provided it in an earlier packet. In addition Dennis Carrington, Senior Planner, Mike McNeely, City Engineer, Janice Nadal, Transportation Planner and Eddie Torrez with RBF consulting are available for questions.

Dennis Carrington, Senior Planner, presented the review of the Bart Extension to Milpitas, San Jose and Santa Clara DEIS/DEIR Comment Letter and recommended that the Planning Commission recommend that the City Council approve the Draft comment letter on the DEIS/DEIR.

Mr. Carrington explained that the BART extension is from Warm Springs, through Milpitas, San Jose, and Santa Clara. Staff has drafted a response letter to VTA and federal and state laws requires staff to look at alternatives for the project. The no action alternative will encompass existing year 2000 roadway and transit networks, plus any program improvements through 2025, that includes the BART extension to Warm Springs, VTA light rail, bus fleet expansion, bus rapid transit, commuter rail upgrades and automated people mover to the airport.

He explained that the new starts baseline initiative is required by law and is the no action alternative plus expanded bus service in the corridor plus three new bus way connectors from I-680 to Warm Springs and from Warm Springs to I-880 and there would be an express bus loop that would go through Milpitas. The BART extension encompasses 16.3 miles and there would be seven stations plus the future unfunded south Calaveras station. There would be a maintenance facility and the lines would have six-minute headways so trains would be coming on average every six minutes and would be serviced from the East Bay to San Francisco. There would be some alignment and station options and in the future, 83,600 riders are predicted by 2025 and revenue service would start around 2014.

Mr. Carrington explained that the environmental document was issued by VTA on March 16th for a 60-day review period and all of the Cities have to respond within that period in order to have the drafters of the environmental document respond to the comments.

Commissioner Giordano asked how was the public notified that the draft review was available. Mr. Carrington responded that VTA did a public notice to everyone owning a property within 1,000 feet of the property line. Also, the City mailed out a notice to every resident in the City of the VTA meeting, the Planning Commission meeting and the May 4th Council meeting. He added that the City has until May 14th to respond to VTA and the draft letter goes forward to Council on May 4th.

Mr. Carrington stated that staff is concerned about land use and the Montague Capitol station design because it will be a major station that will be located next to light rail, BART, automobiles, buses, pedestrians, the Great Mall, and staff hopes to have a 100 acre transit oriented development around the BART station, so staff wants ensure that the land use is regional in nature and connects to the Midtown area around it.

Staff felt strongly about maximizing transit oriented development and minimizing property acquisition to make the project economically feasible. Staff suggested a compact design to the station itself and encourages pedestrian and bicycle travel. Staff would like to have a plaza that would have transit related retail and a possible elevated walkway that would go over to the light rail and continue to the properties to the south west of Capitol Montague, where someone could walk across the bridge to the light rail and walk over to BART. Staff would want the station to be linked physically to the light rail and to the property to the southeast and linked to the Great Mall.

Staff also suggests a no fee underground connector to the Great mall because BART will be below ground. A well-lit safe corridor is suggested where someone doesn't have to cross Montague.

Mr. Carrington commented that BART is proposing a bus transit area on land that would have to be acquired at grade. There would be a parking garage located east of the track way and there would be area between the garage and Gladding court that would not be developed. BART is calling for potential future transit facilities and are very unclear about it. Staff is concerned about the design and felt that it wasn't a very mature design and that not a lot of thought was put into it and is concerned about how the proposed plan would relate to the Midtown area since it is an important hub, so staff had a consultant prepare a study.

Mr. Carrington explained that the new alternative is a much smaller footprint and the area that would be a transit plaza would not be purchased under staff's option. It would be developed by the market for commercial purposes instead of having a parking lot but would have instead a vibrant transit oriented development. The garage area would be expanded further to the east than the BART proposal and would have immediate access to Montague Expressway. Staff felt that the proposed study offers much more efficient design and provides bus patrons immediate access to the transit plaza, and they don't have to cross Milpitas boulevard. The other benefit is that there would be much less purchasing of land to do this so the project would be less expensive.

Mr. Carrington stated that there would be two revenue gates, one next to the parking structure and one that would serve the Great Mall and the hotel, and hopefully other transit oriented development that would be located on the north side of Montague and east of Piper.

Mr. Carrington stated that for a 2005 design, assuming with a minimum operating segment (MOS), that Berryessa would be the end of the line, so staff would need a lot of parking if Milpitas is going to be an end of the line station and that is why more analysis is needed under MOS conditions.

Commissioner Garcia asked if the proposed study if for residential or commercial. Mr. Carrington stated that residential is a really good mix for transit because "eyes" will be watching. Also, residential is good to have a low crime area and also good to have people living there and have high density, and housing will be in demand. He stated that staff would be sending out a request for quote to look at a firm to prepare a transit oriented plan for around 100 acres.

Commissioner Giordano noted that in the summary, significant parking impacts occur at the station and asked if the MOS will still be in place past 2015. Mr. Carrington stated that given funding issues, there could be a minimum operating segment that is a short extension of a couple of stations into the project if that is all that is funded. For example, if BART were built and Montague/Capitol station is the end of the line and it is not funded, then VTA and BART would need to do more analysis.

Mr. Carrington stated that staff is concerned where BART would cross Dixon Landing Road. BART has analyzed three options and prefer an aerial option where BART would be on a bridge up and over Dixon Landing Road and the railroad would be at grade. The City wants to go on record stating that it is not in favor of this option. Staff prefers for either BART to be at grade and Dixon Landing Road goes underneath it or to have a retain cut where BART goes underneath Dixon landing Road. Again, staff felt that VTA did not do enough analysis.

Mr. Carrington explained that the pros for the at grade option where Dixon goes under BART and the railway is that it separates the railroad from the roadway, eliminates train noise and traffic conflicts and would have minimal noise impacts to area residents and businesses. There do exist sound walls at grade that have been built and are in place that would continue to be effective and there would be less visual minimal impacts because the train would be at grade.

Mr. Carrington explained that the cons for Dixon Landing Road going underneath an at grade BART is that its design speed could be fairly slow, about 35 to 40 miles an hour and access to three driveways would be impacted, so staff would have to find design fixes to these problems. Also, it would cost 8 million dollars more than building a bridge over.

Mr. Carrington explained that the pros for the retain cut where BART goes underneath Dixon and the railroad remains at grade, is that there would be minimal noise and visual impacts because BART is underground and it is not visible and the cons is it would cost 11 million dollars.

Mr. Carrington explained that staff does not support the aerial option and is not convinced that sufficient analysis of noise, vibration and aesthetics can be mitigated or have been analyzed well enough. The pros for the aerial option is that it is the least costly of the three alternatives and would avoid long term traffic impacts to Dixon. The other options could conceivably close Dixon Landing Road or restrict access to it for a significant amount of time until the structure is completed.

The cons are that there would be significant noise impacts with an aerial structure, BART would be above the existing sound walls and would have its own sound walls on the structure itself. He explained that the design that was included in the EIS shows a sound wall on the aerial structure but doesn't come far enough south to provide shielding for trailer parks immediately to the east of the tracks, which would not be good for the elderly, and the structures are not designed to withstand the noise and vibration that would come from BART.

Commissioner Giordano asked what is the City's influence versus Fremont's influence, and who would win the dispute of the aerial structure since Fremont wants it. Mr. Carrington explained that the aerial structure affects Milpitas, not Fremont, and that BART is trying to save money with the least costly alternative.

Mr. Carrington explained that the City hired RBF consulting to investigate the noise issues with BART and that the analysis is included as attachment C.

Mr. Carrington stated that the third issue staff is concerned about is the railroad. Milpitas supports the abandonment of the Union Pacific Railroad spur line north of Montague rather than relocating it and it would significantly reduce project costs and would avoid disrupting a public park and private properties and would support future development in surrounding areas.

Mr. Carrington explained that there are two alternate locations (one in Fremont and one in Milpitas) for a track that looks like a “wye”, and what it does is that it allows a train to turn around and go the other direction. Staff is opposed to having the “wye” in Milpitas. One of the concerns is that it would move from where there is an existing “wye” over to the industrial park off Gibraltar. Looking at the plan, staff would lose 50 to 60 parking spaces and all or part of an existing building, which would have negative impacts to the city. It would also negatively impact the transit-oriented development for the Montague/Capitol station. He explained that there are approximately 40 acres of land that staff would like to see be included in transit oriented development and if there is a railroad “wye” next to it, that negatively impacts half of it and negatively impacts the balance. It would also involve a 20-foot wide take from City park or private park and the Great Mall and would take about 40 parking spaces from the Great Mall so staff is in favor of the option that would put the “wye” in Fremont.

Commissioner Garcia asked where is the union pacific spur line located at and Mr. Carrington referenced the aerial photo.

Mr. McNeely added that the spur line is north of Montague and Capitol; pass Yosemite, which have four sub spurs off the spur line. He explained that there are five customers that would have to be compensated if the spur lines were removed and VTA is interested in removing those and paying off the customers.

Commissioner Garcia asked how does the compensation take place and Mr. McNeely explained that VTA could provide truck service that would have to take it to the closest rail facility.

Commissioner Garcia asked if the truck service would be long term and who would pay for the service. Mr. Lindsay responded that the service would be long term and VTA would have to pay for the alternative service. Staff is expecting that approximately two or three customers are being served from the rail line and staff had the opportunity to go out and look at the different service points and are in the process of talking to Union Pacific about abandoning certain segments of the line because the service is no longer needed and there are few remaining customers. If VTA were to discontinue service they would have to work out an arrangement to pay for that and that is actually a long-term expenditure.

Mr. McNeely added that it might be cost effective and much cheaper because in order to construct the facility to cross the BART alignment, BART will be under the trench underground, and that is where the parking structure is near the Great Mall, and goes all the way south of Capitol and there has to be a huge structure over the BART to support the spur lines, which could cost between 20 to 30 million dollars that BART could save, plus BART would have to purchase the right away up on the west side of the railroad through the Great mall and Parc Metro and the future park at Curtis.

Commissioner Galang asked what is the standard height of the aerial structure and Mr. Carrington responded that the structure would be 24 feet above grade.

Commissioner Galang asked if the aerial structure could be increased by several height and Mr. Carrington responded that there has to be a minimum height in order to meet engineering requirements and to have large vehicles pass underneath it, so BART doesn't want to build it any higher than they have to but there is a certain minimum that they would have to actually build above the grade of Dixon Landing Road in order to have large trucks on Dixon pass underneath the tracks.

Commissioner Galang asked how would BART be built underneath and Mr. Carrington replied that it would go under Dixon landing or to have Dixon landing go underneath an at grade BART and there would be tunneling options.

Mr. McNeely added that if Dixon goes under, the way to do that would be possibly raising the railroad and BART a few feet, that is the only way that option would come into play.

Mr. Carrington stated that staff is concerned about parking impacts occurring at the BART station if it is the end of the line and is still in place past 2015 and it's hard to project out in the future what the parking demand would need and staff doesn't think BART has done a very good job of it, so in the comment letter, staff asking BART to do a better job at analysis so staff can know what they are going to be up against.

Commissioner Giordano asked if staff is looking at parking structures of various levels and Mr. Carrington responded the proposed design does show a parking structure adjacent to Montague plus a parking field and bus transit area to the south, an area that would have to be acquired. Staff's option shows a much larger parking structure and would have a much more compact design with a larger parking structure that would go all over to Gladding Court and it would be several stories high and would build as much parking needed and is recommending a transit center down on the ground adjacent to Montague and staff felt it is a good option to consider.

Mr. Carrington stated that a detailed 2025 parking analysis should be undertaken that looks at the worst case should the Berryessa station be delayed beyond 2015 and hopefully staff will not have to deal with this and the entire 16.3 miles would be constructed.

Mr. Carrington went on to explain staff's concerns about the significant and unmitigable impacts to the views of the area around the aerial structure around Dixon, stating that it is unattractive and it is above grade and staff felt that it would be the only area in Milpitas that would be above grade so that someone arriving in Milpitas, the first thing they see when they get off the freeway instead of seeing the mountains in Milpitas they will see the elevated structure.

Mr. Carrington showed an image taken out of the EIS that shows high above grade how the BART aerial structure would look like that would be several hundred feet long. What is not being shown is the sound wall that would actually make the structure much larger in appearance that it is now so it is an inadequate representation of how visually impacted it would be.

Commissioner Mohsin asked how tall would the sound wall be and Mr. Carrington replied "ten feet"

Mr. Carrington noted that staff did comment on transportation transit, community services and facilities, hazardous waste, land use, noise, vibration, security and system safety, socioeconomics, utilities, visual quality and aesthetics, water resources, water quality, flood plains and construction, so the letter is quite lengthy and so with that staff recommends that the Commission close the public hearing and recommend that the City Council approve the draft comment letter on the BART extension draft EIR/EIS.

Commissioner Sandhu asked about the 100-acre land near Montague and asked where is the land located and if buildings have to be demolished. Mr. Carrington replied that there is a wide variety of industrial land uses that is somewhat older and if someone was to look at an aerial photo, they would see trucking companies with scattered trucks and otherwise very large vacant lots. North of Montague, there is some older industrial land and structures and there is some new structures as well, so it comes down to relative value of land and what could be done with a transit area plan which would put a lot of value under a 100 acres or so of land right next to a regional transportation hub and the natural market forces will raise the value of the land.

Commissioner Sandhu asked if the City will condemn the property and will be able to buy at market rate. Mr. Carrington responded that BART and VTA would buy any land necessary for the construction of the garage, station, related facilities, track ways, extension of Milpitas Blvd., transit centers, and all of that would be purchased. Other lands within this theoretically 100 acres around the BART station would not be purchased and would not be condemned and would turn over at the natural rate determined by the market.

Chair Nitafan complained that the Commission normally is provided the EIR document and this time, did not receive it. Mr. Carrington noted that the Commission was provided a citizens guidebook and were also provided a cd rom, which has the entire document on it.

Chair Nitafan still felt that the Commission should have received a hard copy of the document.

Chair Nitafan asked who drafted the comment letter and Mr. Carrington replied that it was planning staff, including himself, Joe Oliva, Principal Transportation Planner, engineering staff, fire staff, and other agencies who have looked at the letter and made their comments to staff which are summarized with the letter.

Chair Nitafan is concerned that the South Calaveras station is not funded. He felt that 12 miles was too long from Warm Springs to the Montague/Capitol station.

Mr. Lindsay replied that VTA agreed to study the future Calaveras optional station and that VTA recognizes how important the station location is to the City of Milpitas and has included it all the way through its studies including the EIR. There hasn't been funding identified yet for this station but that is why it is considered as a future station. By including it in the environmental document if funding becomes available, then supplemental work is not needed after the fact, but at this time, funding is still being investigated.

Chair Nitafan was in favor of supporting the Calaveras station over the Montague/Capitol station.

Mr. Lindsay stated that the Montague station is a critical station for a variety reasons. It is the first inter model station within the county, the first time BART touches light rail and it has enough land mass around it to facilitate the type of activities which would really strengthen the inter model-the buses, the pedestrians, the bicycles, the automobiles, the light rail, and BART all coming together. That station made it into every minimum operating segment (MOS) that the FTA (Federal Transit Authority) asked VTA to look at, and that's how important that station was to the alignment. As an alternative, staff wouldn't support the Calaveras station over the Montague station, but would support it in addition to the Montague station.

Chair Nitafan need clarification on the new action alternatives and Mr. Carrington explained that there is no action alternative, which is the 2000 improvements, plus improvements that are already programmed and paid for through 2025 including the construction of Warm Springs and some bus lines. The other is the baseline alternative that is the no project alternative plus some types of improvements of extensions of bus way service.

Chair Nitafan felt that the City should not spend any money on BART because people voted for BART. He was concerned that all of these other alternatives cost money and that BART should pay for it.

Mr. Carrington noted that federal and state law requires that the City complete an alternatives analysis in order to have an adequate EIR and if staff were not to undertake a base line alternative, staff would probably be in violation of state and federal law.

Vice Chair Lalwani asked for clarification on the VTA process and recalled that VTA has been holding meetings, and then letters were sent out to households, and then Milpitas residents give input. She asked how could residents respond to the City. Mr. Carrington noted that residents would respond to Tom Fitzwater of VTA, so during the 60 day public review period between March 16th and May 14th, members of the public are urged to respond. At all of the various BART presentations that have taken place over several months, copies of the cd rom were made freely available to whoever attended, so that someone could read the document off the cd rom. He explained that VTA couldn't print hundreds of the large printed document.

Vice Chair Lalwani asked what will happen when the City responds to VTA. Mr. Carrington responded that the process is there is a draft environmental document, it goes out for public review. The public review period closes, and those responses, letters that have been sent in before that end date will then be analyzed and responded to by VTA consultants and staff, so what they would do then is write what are called responses to comments. VTA would include a photocopy of every letter dividing it up into comments, and then number them, and respond specifically to each one of those individual comments from the beginning to the end of each of the letters that is provided.

Vice Chair Lalwani commented that she is being pessimistic that even though notices were sent to households, she is curious to know how many people responded and has a feeling that most people don't even know what is happening and only when it is finalized, there will be a barrage of questions about what's happening and why was the public not informed. She doesn't know what the solution is but it's just her natural feeling. She has talked to people and they are not aware of what is happening, and all the decisions are being made and the deadline is May 14th.

Mr. Lindsay commented that the notice that was sent out to all Milpitas residents, the City included its own hotline number and received approximately 19 messages on that hotline number in addition to a numerous inquiries on the internet and that is currently being tallied as well, so 19 messages is not a lot out of a population of 65,000 but staff did make the effort. There were two notices sent out and the community came out and attended the meetings and responded via internet and the telephone, but human nature is to not come out and once the dirt is being turned, people start realizing what's going on.

Vice Chair Lalwani noted that the reaction she got from people at Weller school is that it seems such a distant future and people are not even thinking about it and the feeling is that it is not going to happen because it is too far in the future.

Chair Nitafan opened the public hearing.

Kay Patel, 279 Balboa Way, felt unfortunate that he lives in the Dixon Landing area, and felt that the reports are not reflecting the current reality of what is happening. Trains pass near Dixon and are only going 5 to 10 miles an hour and he can hear lots of noise. The current noise level is being reported at 56 db, and the expected level is 62 db. He cannot imagine that BART is going back and forth every six minutes and that the noise level is only going to be increased by 6 db. He wants to know what are the mitigation factors that will be implemented to reduce the level. He is also concerned and disagrees with the aerial station and is disappointed that it might come to the City of Milpitas.

Mr. Patel is also concerned with the sound wall concern and noted that the report points out that if there is a sound wall, it will not be brought all the way on the south side of Milpitas, and he hopes that that consideration is being in place. He noted that someone could obviously see on the superimposed picture that BART doesn't want to show the hills and they took the picture from the other side. He hopes that the third option which is the retained cut is chosen, even if it is more expensive and felt that it wasn't fair that BART wants to go at the lowest cost at the cost of the citizens that are living there, and there are a lot of houses on the Milpitas on the railroad tracks there and is also disappointed that there were not a lot of responses from citizens. He would like to know that if there is a matter, how do you know how many residents responded. He is also concerned about the property values of the houses around the neighborhood.

Monte Britton, 1515 N. Milpitas Blvd., commented that he went to the VTA meeting last week and is disappointed that VTA wants to build the aerial structure because it is the cheapest and the quickest way without any regard to the residents. He is concerned because there is a lot of senior housing on North Milpitas Blvd., plus the City has spent a lot of money on existing sound walls behind Mobile Lodge and Pioneer Park. He felt that the aerial structure would ruin the whole feel of the area and would look like a Disneyland monorail up in the sky. He felt that the City has a chance to use money wisely that's already in place with the existing sound walls and prefers to go underground or the at grade cut. Both of these options would be much better for the north part of town as far as the looks and the feel and the quality of life in Milpitas won't look like some metropolitan downtown New York city.

Rob Means, 1421 Yellowstone, felt that there is a credibility problem with VTA's fiscal estimates and felt that VTA is doing an average number with decibels levels and still haven't come up with an explanation on how they expect to get a 71% fairbox recovery and felt that they have not done good research. Ultimately, he thinks the BART dream is over, and that it is time to say so and some of the other Cities seem to be starting in that direction. He hasn't seen any movement as part of Milpitas and felt that the Commission has an opportunity to recommend denial to Council for the EIS.

Frank De Schmidt, Economic Development Commission, asked if the projected cost at Dixon Landing crossing is the true cost. He felt that the research hasn't been done to figured out the entire cost and there could be more millions of dollars added through the years. He noted that the residents leaving near San Jose airport need additional sound walls and sound proofing windows.

Motion to close the public hearing.

Close the Public Hearing

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

Commissioner Giordano asked staff why they are not recommending the retain cut which seems would lessen the impact to residents.

Mr. McNeely explained that staff has to "fish or cut bait" and is interested in what the community's comments are because staff really needs further analysis to decide between the retain cut and the at grade option. With the scarcity of information thus far submitted, it appears that the advantages of the at grade option are preferable, and that is staff's recommendation so far.

Mr. McNeely noted that it is ultimately going to be the Councils' decision and the advantages of the retain cut is bringing BART lower, and out of that option, the City will not get the grade separation of the railroad, which is why staff felt it to be a significant advantage because a train has to blow its horn when it goes at an at grade crossing and would seem to be a tremendous advantage to the community.

Commissioner Giordano felt that the comment letter did not allow any latitude for the retain cut.

Mr. McNeely stated that on page 2, the letter states that further analysis is needed to thoroughly evaluate the two non-aerial options and there will have to be a decision made because they will have to come to grips with a preferred alternative.

Mr. Lindsay explained that the way the letter is organized is that there is a summary of bullet points on pages 1 and 2. Page 4 goes into each point in more detail and is a further elaboration that talks about the need for additional information, and given the information provided at this time, the at grade option is staff's choice, but clearly more information is needed.

Commissioner Giordano asked if the comments limit the options at this point or allows for another look at other possibilities.

Mr. McNeely noted that VTA is running the EIR parallel with the preliminary design, which is called the 35% design, so while staff is preparing these comments, VTA is making decisions that will affect everyone later this year and the 35% design will be completed in a year and a half. The bottom line is by the end of the year, these basic decisions will have to be made because that is when the final EIR will be published and certified. Also, the board of directors will be meeting in November and will have to approve a preferred option out of all of the options.

Commissioner Garcia commented that the City is at a decision point for some of these things, and felt that the letter is very gentle and suggested stronger wording that would say that the City demand more information. He felt that staff needs to make a firm requirement on VTA and BART otherwise the impacts are significant to the City.

Commissioner Garcia asked what are the possibilities of the MOS being in Milpitas because the project is in financial difficulty for a lot of reasons and it may come to Milpitas but not much further so it would seem to him that the environmental impacts on Milpitas, if this is the MOS forever, than the environment impacts in Milpitas would be more significant in the worst case scenario. He knows there are a lot of impacts around the Fremont BART station and also in the Dublin area, and asked what is the worst case if this is the MOS.

Mr. McNeely commented that there are many opinions about that and they would have to indicate that in the environmental document and it is not so indicated in this document, so the MOS in this document is eliminating some of those stations in San Jose, and that is the way it is being addressed. He can't say whether the document will be coming back and if it did, VTA would need another billion dollars to complete the document with federal money. Also, San Jose would want BART to extend to some portion in San Jose.

Vice Chair Lalwani asked if the reports could be revised or redone in 10 to 15 years.

Mr. Lindsay explained that there is a long time frame for the project and clearly conditions can change over a period of time. The VTA needs to have a completed environmental document for them to approve the final design of the BART alignment, and the design period will probably be a few years and the construction will take a longer time period. If there are significant changes to the environment which affect how the project has additional significant impacts on the project, there will be a supplemental environmental document for the project because of its breath, restoration, and changes that will more than likely occur, and those conditions will be evaluated during the supplemental reviews. He stated that California law allows for the fact that if something does change that wasn't analyzed, it can definitely come back for additional review and consideration and mitigation measures considered, but it usually requires a substantial change in existing conditions and considering a 15 to 20 year timeframe, and the advancement of transportation planning and modeling, he can't really foresee anything of the magnitude that would require a full blown recirculation of the document. The City of Milpitas experienced the recirculation of an older environmental document when the Milpitas Business Park was first developed, west of I-880, where Cisco is now, the original EIR for that business park was quite outdated because traffic conditions change considerably and staff redid the EIR because of the conditions changing.

Vice Chair Lalwani asked if Mr. Lindsay recalls the duration of time from the inception to completion and Mr. Lindsay explained that the Milpitas Business Park wasn't completed and a lot of land was vacant and what changed was the environment around it and the amount of traffic going through Milpitas. At the time the EIR was done, staff did not expect the rapid growth in the north San Jose area and the Milpitas area.

Chair Nitafan agrees with Commission Garcia that the comment letter is too humble, and suggested that stronger and more demanding words are needed such as demanding the need for the South Calaveras station in Milpitas. He noted that the Commission, Council, and the public support the Calaveras station. He also felt that more publicity is needed, especially since the project is 35% completed. Staff needs to inform the public more and reach out more, just like the City did at the intersection of Calaveras and R-237, and even won a state award for publicity of that project because the public was informed and he felt that the public really approved the project.

Chair Nitafan suggested on page 1, change the sentence that states, "Milpitas fully supports the development and operation of a second station located at the southwest quadrant of Calaveras and Milpitas Blvds." to "Milpitas strongly supports the development and operation of a second station located at the southwest quadrant of Calaveras and Milpitas Blvds."

Commissioner Giordano suggested on page 2, under Dixon Landing Road options, strike out the sentence that reads, "Further analysis is needed to thoroughly evaluate the two non-aerial options" and suggest to insert the wording, "Without further analysis and input, the City cannot fully evaluate the two non aerial options, and reserves the right to support either option when said analysis is provided".

Motion to recommend that the City Council approve the Draft comment letter on the DEIS/DEIR with the following two changes:

1. Page 1 – Change the sentence that reads,

“Milpitas fully supports the development and operation of a second station located at the southwest quadrant of Calaveras and Milpitas Blvds.”

to

“Milpitas strongly supports the development and operation of a second station located at the southwest quadrant of Calaveras and Milpitas Blvds.”

2. Page 2- Strike out the sentence that reads,

“Further analysis is needed to thoroughly evaluate the two non-aerial options”

and replace with

“Without further analysis and input, the City cannot fully evaluate the two non aerial options, and reserves the right to support either option when said analysis is provided”.

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

IX. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:36 p.m. to the next regular meeting of May 12, 2004.

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary